

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

HARRIET BERNSTEIN, on behalf of herself )  
and all others similarly situated, )  
Plaintiff, ) Case No. 1:03-CV-1005  
V. )  
CORTS TRUST FOR PROVIDENT ) MDL Case No. 1:03-MD-1552  
FINANCING TRUST I, et al., )  
Defendants. ) Judge Curtis L. Collier

## ORDER

In accordance with the accompanying Memorandum, the Court hereby orders as follows:

1. In the case of *Azzolini v. CorTS Trust II for Provident Financial Trust I, et al.*, No. 1:03-CV-1003, the Court hereby:

A. **GRANTS IN PART** “The SSB Defendants’ Motion to Dismiss...the Third  
Brief of the Amended Consolidated Azzolini Class Action Complaint” (Court File No.  
MISSES:

1. any Section 11 claims based upon alleged misrepresentations and

omissions relating to UnumProvident Corp.'s finances and business;

2. any Section 11 claims based upon alleged misstatements or omissions in the CorTS II Prospectus referenced in ¶ 161 of the Azzolini Amended Consolidated Complaint (Court File No. 11); and
3. the Lead Azzolini Plaintiffs' Section 15 control person claim against Defendant Salomon Smith Barney, Inc..

**B. DENIES IN PART** "The SSB Defendants' Motion to Dismiss...the Third Claim For Relief of the Amended Consolidated Azzolini Class Action Complaint" (Court File No. 19) with respect to claims asserted by the Lead Azzolini Plaintiffs based upon alleged misrepresentations or omissions relating to due diligence;

**C. GRANTS IN PART** the Lead Azzolini Plaintiffs' request for leave to amend (Court File No. 45, p. 24 n. 12) with respect to the Plaintiffs' Section 15 claim; and

**D. DENIES IN PART** the Lead Azzolini Plaintiffs' request for leave to amend (Court File No. 45, p. 24 n. 12) with respect to any claim dismissed in this order except for the Section 15 claim.

2. In the case of *Bernstein v. CorTS Trust for Provident Financing Trust I, et al.*, No. 1:03-CV-1005, the Court hereby:

**A. GRANTS IN PART** "The SSB Defendants' Motion to Dismiss Counts I, II, and III of the Amended Bernstein Class Action Complaint" (Court File No. 29); and **DISMISSES**:

1. any §§ 11 or 12(a)(2) claims based upon alleged misrepresentations and omissions relating to UnumProvident Corp.'s finances and business;
2. any §§ 11 or 12(a)(2) claims based upon alleged misstatements or

omissions in the CorTS I Prospectus referenced in ¶ 12 of the Bernstein Amended Complaint (Court File No. 18);

3. Bernstein's Section 11 claim against Defendant SSB Holdings; and
4. Count III of the Amended Bernstein Complaint which alleges a

Section 15 control person violation against Defendants SSB Holdings, SPC, and CorTS Trust.

**B. DENIES IN PART** "The SSB Defendants' Motion to Dismiss Counts I, II, and III of the Amended Bernstein Class Action Complaint" (Court File No. 29) with respect to any claims asserted by Bernstein based upon alleged misrepresentations and omissions relating to due diligence;

**C. RESERVES RULING IN PART** on "The SSB Defendants' Motion to Dismiss Counts I, II, and III of the Amended Bernstein Class Action Complaint" (Court File No. 29) with respect to whether aftermarket purchasers of CorTS securities have asserted a valid Section 12(a)(2) claim;

**D. GRANTS IN PART** Bernstein's request for leave to amend (Court File No. 55, p. 27) with respect to her Section 15 claim and Section 11 claim against Defendant SSB Holdings; and

**E. DENIES IN PART** Bernstein's request for leave to amend (Court File No. 55, p. 27) with respect to any claim other than the Section 15 claim and the Section 11 claim against Defendant SSB Holdings.

**SO ORDERED.**

**ENTER:**

/s/  
**CURTIS L. COLLIER**  
**UNITED STATES DISTRICT JUDGE**